

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

KEVIN HERTZ, et al.,

Defendants.

No. CV04-2219C

PLAINTIFF MICROSOFT  
CORPORATION'S MOTION,  
PURSUANT TO FED. R. CIV. P. 55(a)  
AND W.D. WASH CIV. R. 55(a), FOR  
ENTRY OF DEFAULT AGAINST  
DEFENDANTS SCOTT SANDERS,  
IGOR SHAPOSHNIKOV, AND  
JAMEEL PARCHMENT

NOTED FOR CONSIDERATION:  
**MARCH 10, 2005**

Plaintiff Microsoft Corporation ("Microsoft") respectfully moves for entry of default against defendant s Scott Sanders and Igor Shaposhnikov, for failure to plead or otherwise defend against Microsoft's Second Amended Complaint for Damages and Injunctive Relief ("Second Amended Complaint"), and respectfully moves for entry of default against defendant Jameel Parchment for failure to plead or otherwise defend against Microsoft's Third Amended Complaint for Damages and Injunctive Relief ("Third Amended Complaint").

STATEMENT OF FACTS

This is an action for trespass to chattels, conversion, and for violations of the Federal CAN-SPAM Act (15 U.S.C. §7701 *et seq.*), the Washington Commercial Electronic Mail Act

MOTION FOR ENTRY OF DEFAULT  
AGAINST DEFENDANTS DELASSIO - 1  
CASE NO. C04-2219C

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(RCW Ch. 19.190), the Washington Consumer Protection Act (RCW Ch. 19.86), the Federal Computer Fraud and Abuse Act (18 U.S.C. §1030(a)(4),(5), (g)), and the Lanham Act (15 U.S.C. §1125(a)). The defendants, including Anthony Roy, Scott Sanders, Igor Shaposhnikov, and Jameel Parchment, are all “affiliates” of defendant Kevin Hertz’s affiliate program, among others. *See* Second Amended Complaint ¶¶ 6, 19, 31; Third Amended Complaint ¶ 27. These defendants engaged in widespread spamming to promote the products marketed through Hertz’s affiliate program by transmitting, procuring the transmission, and/or assisting the transmission of misleading, deceptive, and unsolicited commercial e-mail messages. Second Amended Complaint ¶¶ 56-65; Third Amended Complaint ¶¶ 56-65.

Defendant Scott Sanders was served with a Summons and the Second Amended Complaint on November 7, 2005. *See* Declaration of Theodore J. Angelis (“Angelis Decl.”) ¶ 2 & Ex. A. This summons notified Mr. Sanders that his answer was due within 20 days of service. *Id.* ¶ 3. Mr. Sanders has failed to plead or otherwise defend against Microsoft’s action. *Id.* The time provided by law for responding has now expired and Mr. Sanders is in default. On February 24, Microsoft provided written notice to Mr. Sanders that it intended to seek entry of default against him if he did not file a response pleading before March 9. *Id.* ¶ 4 & Ex. B. Mr. Sanders did not file a responsive pleading. *Id.* ¶ 4.

Defendant Igor Shaposhnikov was served with a Summons and the Second Amended Complaint on February 8, 2006. *See* Angelis Decl. ¶ 5 & Ex. C. This summons notified Mr. Shaposhnikov that his answer was due within 20 days of service. *Id.* ¶ 6. Mr. Shaposhnikov has failed to plead or otherwise defend against Microsoft’s action. *Id.* The time provided by law for responding has now expired and Mr. Shaposhnikov is in default. On February 28, Microsoft provided written notice to Mr. Shaposhnikov that it intended to seek entry of default against him if he did not file a responsive pleadings before March 9. *Id.* ¶ 7 & Ex. D. Mr. Shaposhnikov did not file a responsive pleading. *Id.* ¶ 7.

MOTION FOR ENTRY OF DEFAULT  
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1 Defendant Jameel Parchment was served with a Summons and the Third Amended  
 2 Complaint on February 3, 2006. *See* Angelis Decl. ¶ 8 & Ex. E. This summons notified Mr.  
 3 Parchment that his answer was due within 20 days of service. *Id.* ¶ 9. Mr. Parchment has  
 4 failed to plead or otherwise defend against Microsoft's action. *Id.* The time provided by law  
 5 for responding has now expired and Mr. Parchment is in default. On February 28, Microsoft  
 6 provided written notice to Mr. Parchment that it intended to seek entry of default against him  
 7 if he did not file a responsive pleadings before March 9. *Id.* ¶ 10 & Ex. F. Mr. Parchment did  
 8 not file a responsive pleading. *Id.* ¶ 10.

9 The Court has subject matter jurisdiction and personal jurisdiction over these  
 10 defendants, *see* Second Amended Complaint ¶¶ 2-3, and venue in this Court is proper for  
 11 Microsoft's action because a substantial part of the events or omissions giving rise to the  
 12 claims set forth in Microsoft's complaint occurred in King County, the cause of action arose in  
 13 King County, and work was performed in King County. Second Amended Complaint ¶ 5.

#### 14 STATEMENT OF ISSUE

15 Whether default should be entered against defendants Scott Sanders, Igor  
 16 Shaposhnikov, and Jameel Parchment.

#### 17 EVIDENCE RELIED UPON

18 This motion is based on the Declaration of Theodore J. Angelis and the pleadings and  
 19 papers previously filed in this matter.

#### 20 AUTHORITY AND ARGUMENT

21 Federal Rule of Civil Procedure 55(a) provides: "When a party against whom a  
 22 judgment for affirmative relief is sought has failed to plead or otherwise defend as provided  
 23 by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter  
 24 the party's default." Sanders, Shaposhnikov, and Parchment were served with process more  
 25  
 26

1 than 20 days ago, but they have failed to plead or otherwise defend against Microsoft's action.  
 2 Accordingly, they are in default.<sup>1</sup>

3 Western District of Washington Civil Rule 55(a) further provides that the clerk shall  
 4 enter default against any party that has entered an appearance but failed to plead or otherwise  
 5 defend, provided that the moving party has given "the defaulting party written notice of the  
 6 requesting party's intention to move for the entry of default at least five judicial days prior to  
 7 filing its motion and must provide evidence that such notice has been given in the motion for  
 8 entry of default." Although Microsoft does not concede that Sanders, Shaposhnikov, or  
 9 Parchment has entered an appearance, out of an abundance of caution it provided written  
 10 notice to those defendants of its intention to seek default.

11 Microsoft respectfully requests that the Clerk of Court enter default as to each of these  
 12 defendants.

13 DATED this 10th day of March, 2006.

14 PRESTON GATES & ELLIS LLP

15  
 16 By /s/ Theodore J. Angelis  
 17 David A. Bateman, WSBA # 14262  
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1 See Fed. R. Civ. P. 12(a)(1)(A) (establishing that, absent a contrary statute, a defendant's  
 answer is due within 20 days); *Beller & Keller v. Tyler*, 120 F.3d 21, 25-26 (2d Cir. 1997)  
 (holding that the 20-day time period for answering a complaint applies to out-of-state service  
 even if state law provides a different deadline for filing an answer).

**DECLARATION OF ECF FILING AND SERVICE**

I declare, under penalty of perjury, under the laws of the State of Washington, that on March 10, 2006, I electronically filed the foregoing document, along with the attached proposed Order, and the Declaration of Theodore J. Angelis in support, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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and I hereby declare that I have arranged for service of the document(s) to the following non-CM/ECF participants by mailing the same, properly addressed and prepaid:

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Signed this 10<sup>th</sup> day of March, 2006, at Seattle, King County, Washington.

Rhonda Hinman  
Rhonda Hinman, Legal Secretary

MOTION FOR ENTRY OF DEFAULT  
AGAINST DEFENDANTS DELASSIO - 6  
CASE NO. C04-2219C

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